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# Law Aimed at Bolstering Competitive Livestock Markets in Missouri Upheld as Constitutional

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# Agricultural Law Digest

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## LAW AIMED AT BOLSTERING COMPETITIVE LIVESTOCK MARKETS IN MISSOURI UPHELD AS CONSTITUTIONAL

— by Roger A. McEowen\* and Neil E. Harl\*\*

In an opinion viewed as crucial to the continued viability of independent livestock producers in Missouri, the United States Circuit Court of Appeals for the Eighth Circuit in *Hampton Feedlot, et. al. v. Nixon*,<sup>1</sup> upheld as constitutional provisions of the Missouri Livestock Marketing Law that the state legislature passed in 1999 preventing livestock packers that purchase livestock in the state of Missouri from discriminating against producers in purchasing livestock except for reasons of quality, transportation costs, or special delivery times.<sup>2</sup> The law also requires any differential pricing to be published.<sup>3</sup>

### Packers and Stockyards Act.

In 1921, the Congress enacted the Packers and Stockyards Act (PSA)<sup>4</sup> as a means of regulating the meatpacking industry. In 1917, President Wilson directed the Federal Trade Commission (FTC) to investigate the packing industry, and the FTC's report documented widespread anti-competitive practices including the operations of stockyards and control of packing plants. In 1920, the five largest packers of the day (Swift & Co., Armour & Co., Morris & Co., Cudahy Packing Co. and Wilson & Co.) signed a consent decree in an attempt to ward off the PSA's passage. Under the consent decree, the five packers were prohibited (among other things) from maintaining or entering into any contract, combination or conspiracy in restraint of trade or commerce, or monopolizing or attempting to monopolize trade or commerce. After passage of the PSA, the packers sued to have the decree either vacated or declared void, but in 1928 the Supreme Court upheld the consent decree.<sup>5</sup> However, the decree was terminated on November 23, 1981.<sup>6</sup> While the PSA was "the most far-reaching measure and extend[ed] further than any previous law into the regulation of private business with few exceptions,"<sup>7</sup> and the powers given the Secretary of Agriculture were more "wide-ranging" than the powers granted to the FTC, the PSA was upheld as constitutional in several court cases from 1922-1934. Unquestionably, the PSA extends well beyond the scope of other antitrust law.

The PSA is administered by the Packers and Stockyards Administration, a part of the United States Department of Agriculture. Enforcement of the PSA is either by a civil

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 by Dr. Neil E. Harl and Prof. Roger A. McEowen

action, initiated by the person aggrieved by the violation of the PSA, or by an action taken by the U.S. Attorney upon request of the Secretary of Agriculture, with jurisdiction in the federal district courts. In recent years, however, the widespread belief has been that enforcement of the PSA has been less than vigorous. This has led to legislative attempts in several states to engraft some of the provisions contained in the PSA into state law with enforcement authority vested in the particular state Attorney General.

### The South Dakota Provision

South Dakota enacted a price discrimination statute in 1999,<sup>8</sup> but the legislation was declared unconstitutional because it applied to livestock slaughtered in South Dakota regardless of where the livestock was purchased.<sup>9</sup> As such, the legislation violated the “dormant Commerce Clause” by requiring out-of-state commerce to be conducted according to South Dakota’s terms.<sup>10</sup>

### The Missouri Act

In *Hampton Feedlot, et. al. v. Nixon*,<sup>11</sup> a consortium of packer interests filed a declaratory judgment action seeking to have the Missouri law declared unconstitutional. The federal district court agreed, and granted permanent injunctive relief before the statute took effect. On appeal, the Eighth Circuit reversed.<sup>12</sup> While the court noted that the Missouri Livestock Marketing Law<sup>13</sup> closely resembled the South Dakota provision by requiring packers to disclose any price that they offer to pay or pay to sellers of livestock for slaughter unless the packers purchase livestock on a grade and yield basis, the court also noted that the Missouri provision does not eliminate any method of sale - it simply requires price disclosure. More importantly, however, the court noted that the Missouri statute, unlike the South Dakota provision, only regulates the sale of livestock sold in Missouri. As such, the extraterritorial reach that the court found fatal to the South Dakota statute is not present in the Missouri statute. The court reasoned that the statute was indifferent to livestock sales occurring outside Missouri and had no chilling effect on interstate commerce because packers could easily purchase livestock other than in Missouri to avoid the Missouri provision. The court also noted that Missouri had legitimate reasons for enacting a price discrimination statute, including preservation of the family farm and Missouri’s rural economy, and an improvement in the quality of livestock marketed in Missouri.<sup>14</sup> The court opined that the Missouri legislature has the authority to determine the course of its farming economy and that the legislation was a constitutional means of doing so. Likewise, the court noted that the federal PSA supports such legislation at the state level.

### Implications of the decision

Packer buying activity amounting to a boycott of Missouri livestock may be an initial reaction to the court's opinion. However, such action would be highly suspect inasmuch as the refusal to buy livestock from particular sellers has been held to be a restraint of trade and an unfair discriminatory practice under the PSA.<sup>15</sup> In any event, an attempt to avoid purchasing livestock in Missouri would likely be viewed as solid confirmation of price discriminatory conduct which could lead to prosecution under the PSA.<sup>15</sup>

Undoubtedly, the Eighth Circuit's ruling provides other states a model to regulate anti-competitive practices in the livestock industry.

### FOOTNOTES

- 1 No. 00-2506, 2001 U.S. App. LEXIS 8966 (8th Cir. May 14, 2001).
- 2 Mo. Ann. Stat. §§277.200; 277.203; 277.212 (2000).
- 3 Mo. Ann. Stat. §277.203(2).
- 4 7 U.S.C. §181-229.
- 5 *Swift & Co. v. United States*, 276 U.S. 311 (1928).
- 6 *United States v. Swift & Co.*, 1982-1 Trade Cas. (CCH) ¶ 64,464 (N.D. Ill. 1981).
- 7 61 Cong. Rec. 1872 (1921).
- 8 S.D. Codified Laws §40-15B *et. seq.*
- 9 *American Meat Institute, et. al. v. Barnett*, 64 F. Supp. 2d 906 (D. S.D. 1999).
- 10 The Commerce Clause of the U.S. Constitution (Art. I, §8) forbids discrimination against interstate commerce, which repeatedly has been held to mean that the states and localities may not discriminate against the transactions of out-of-state actors in interstate markets even when the Congress has not legislated on the subject. See, e.g., *Dean Milk Co. v. Madison*, 340 U.S. 349 (1951) (holding as unconstitutional a city ordinance prohibiting the sale of milk in the city unless it had been bottled at an approved plant within five miles of the city); *Hunt v. Washington State Apple Advertising Commission*, 432 U.S. 333 (1977) (state statute requiring all closed containers of apples sold or shipped into the state to bear “no grade other than the applicable U.S. grade or standard” held an unconstitutional discrimination against interstate commerce). The overriding rationale of the commerce clause was to create and foster the development of a common market among the states and eradicate internal trade barriers.
- 11 *Hampton Feedlot, et. al. v. Nixon*, No. 00-2506, 2001 U.S. App. LEXIS 8966 (8th Cir. May 14, 2001).
- 12 *Id.*
- 13 Mo. Rev. Stat. §277.200 *et. seq.*
- 14 The court found persuasive the testimony of a witness for the state that by providing an incentive for packers to buy livestock on the basis of quality through the grade and yield method, producers would make better genetic decisions, raise better quality animals and earn a better price. The court also noted that, under the current system, larger producers receive premiums for their livestock, giving them an economic advantage over smaller farmers.
- 15 See, e.g., *United States v. American Livestock Commission Co., et. al.*, 279 U.S. 435 (1929); *Capitol Packing Co. v. United States*, 350 F.2d 67 (10th Cir. 1965) (refusal to purchase livestock from a particular market agency for seven weeks).
- 16 See *In re Sterling Colorado Beef Co.*, 39 Agric. Dec. 184 (1980) (dual pricing system held to be unjustly discriminatory and undue or unreasonable preference or advantage violating PSA).